

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

ERVEY LOPEZ-CASTILLO,

Petitioner,

v.

Civ. Action No. 1:18-cv-106  
(Kleeh)

JENNIFER SAAD,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION [ECF NO. 12] AND  
DENYING AND DISMISSING PETITION AS MOOT [ECF NO. 1]

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On May 4, 2018, the pro se Petitioner, Ervey Lopez-Castillo ("Castillo"),<sup>1</sup> filed a Petition for Habeas Corpus Pursuant to 28 U.S.C. § 2241, asking the Court to "vacate [his] sentence in regards to deportation," to "transfer to any other court, if needed," and to appoint an attorney. ECF No. 1 at 10. Pursuant to 28 U.S.C. § 636 and the local rules, the Court referred the action to United States Magistrate Judge Michael J. Aloï for initial review.

On July 23, 2019, Judge Aloï entered a Report and Recommendation ("R&R"), recommending that the Court deny and dismiss the petition as moot, and strike the matter from the active docket of the Court. Judge Aloï notes that pursuant to the Inmate Locator used by the Bureau of Prisons, Castillo was released on

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<sup>1</sup> At the time of Petitioner's filing, he was an inmate at FCI Gilmer.

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December 28, 2018.<sup>2</sup>

The R&R also informed Castillo that he had fourteen days (and an additional three days for mailing) from the filing date of the R&R to submit "specific written objections, identifying the portions of the Report and Recommendation to which objection is made, and the basis of such objection." ECF No. 12 at 4. It further warned that the "[f]ailure to file written objections . . . shall constitute a waiver of *de novo* review by the District Court and a waiver of appellate review by the Circuit Court of Appeals." *Id.* Service of the R&R was accepted on July 26, 2019. To date, no objections have been filed.

When reviewing a magistrate judge's R&R, the Court must review de novo only the portions to which an objection has been timely made. 28 U.S.C. § 636(b)(1)(C). Otherwise, "the Court may adopt, without explanation, any of the magistrate judge's recommendations to which the [parties do] not object." Dellarcirprete v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold portions of a recommendation to which no objection has been made unless they are clearly erroneous. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

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<sup>2</sup> See <https://www.bop.gov/inmateloc/>.

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Because Castillo has not objected, the Court is under no obligation to conduct a de novo review. Accordingly, the Court reviewed the R&R for clear error. The Court agrees with Judge Aloia that Castillo's petition is now moot. See Powell v. McCormick, 395 U.S. 486, 496 (1969) (writing that "a case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome").

Upon careful review of the R&R, and finding no clear error, the Court:

- (1) **ADOPTS** the R&R [ECF No. 12] for reasons more fully stated therein;
- (2) **DENIES** and **DISMISSES AS MOOT** the petition [ECF No. 1]; and
- (3) **STRIKES** this action from the active docket of the Court.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to counsel of record and to the pro se Petitioner, via certified mail, return receipt requested.

DATED: August 16, 2019



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THOMAS S. KLEEH  
UNITED STATES DISTRICT JUDGE